



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2003

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2003-6100

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186804.

The Texas Department of Criminal Justice (the "department") received a request for a copy of Equal Employment Opportunity case number 02000358, pertaining to the requestor's sexual harassment complaint against a co-worker. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information when (1) it contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the disclosure of the information. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual

witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Id.* at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* When there is an adequate summary of the investigation, the summary must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure.

In this instance, we agree that the Investigative Memorandum located at Tab A in the submitted documents constitutes an adequate summary of the investigation. Additionally, as you indicate, the information at Tab D consists of the statement of the respondent. Thus, pursuant to the decision in *Ellen*, this information is generally not excepted from disclosure pursuant to section 552.101 in conjunction with common-law privacy. As the requestor is the complainant in this case, we determine that information identifying the complainant is not excepted from disclosure pursuant to common-law privacy. *See* Gov't Code § 552.023 (person has special right of access to information excepted from public disclosure pursuant to laws intended to protect person's privacy interest as subject of the information); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person herself). However, we have marked information identifying witnesses in the investigation that is protected by common-law privacy and must be withheld under section 552.101.

We note that the Investigative Memorandum at Tab A and the statement of the respondent at Tab D contain information that is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(3) excepts the home address and telephone number, social security number, and family member information of employees of the department. We have marked information in the Investigative Memorandum and the respondent's statement that the department must withhold pursuant to section 552.117(a)(3).¹

In summary, we have marked the information in the Investigative Memorandum at Tab A and the respondent's statement at Tab D that is protected by common-law privacy and must be withheld under section 552.101 of the Government Code. We have also marked portions of this information that must be withheld under section 552.117(a)(3) of the Government Code. With the exception of this information, the department must release the documents at Tab A and Tab D to the requestor. We note, however, that because portions of the information to be released to the requestor are confidential with respect to the general public,

¹We note that the documents at issue contain information pertaining to the requestor. Information pertaining to the requestor is not excepted from disclosure under section 552.117(a)(3) in this instance. *See* Gov't Code § 552.023.

in the event the department receives another request for this information from someone other than this requestor or her authorized representative, the commission must request another decision from this office before releasing any information. The remainder of the submitted information is confidential pursuant to the decision in *Ellen* and must be withheld from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 186804

Enc: Submitted documents

c: Ms. Liza Coldewey
5104 Sioux Lane
Austin, Texas 78734
(w/o enclosures)